

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Hubert Dupigny,

Plaintiff,

-against-

United States of America, *et al.*,

Defendants.

20-CV-10281 (AJN)

ORDER OF DISMISSAL

ALISON J. NATHAN, United States District Judge:

Plaintiff, currently detained in MDC Brooklyn, brings this *pro se* action invoking 42 U.S.C. § 1983. Plaintiff alleges that former U.S. Attorney Geoffrey Berman, Assistant U.S. Attorneys Elinor Torlow, Mollie Bracewell, and Jacob Gutwilling, and defense counsel Aaron Mysliwiec violated his constitutional rights in connection with his criminal proceedings, *United States v. Dupigny*, No. 18-CR-0528-1 (JMF) (S.D.N.Y.).

Plaintiff has previously submitted to this Court a substantially similar complaint, which is pending under case number 20-CV-5346 (CM), and asserts the same claims against the same defendants. In that action, by order dated July 27, 2020, Chief Judge McMahon directed Plaintiff, within 30 days, to either pay \$400.00 in fees or, to proceed *in forma pauperis* (IFP), that is, without prepayment of fees, submit a signed IFP application and a prisoner authorization. Case. No. 20-CV-5346, Dkt. No. 2. Thereafter, Chief Judge McMahon twice extended the time for Plaintiff to comply with the order. Case. No. 20-CV-5346, Dkt. Nos. 4, 6. On November 9, 2020, the Court received Plaintiff's letter stating that he intended to pay the filing fees. Case. No. 20-CV-5346, Dkt. No. 7. On December 7, 2020, the Court received Plaintiff's \$400.00 payment, together with a copy of the complaint. But instead of applying the payment to Plaintiff's pending action, the Clerk of Court mistakenly opened the complaint as a new civil action under

docket number 20-CV-10281, and the action was assigned at random to the Undersigned's docket.

Because this complaint raises the same claims already pending under case number 20-CV-5346 (CM), no useful purpose would be served by the filing and litigation of this duplicate complaint. As a result, this action is dismissed without prejudice to Plaintiff's pending action under case number 20-CV-5346 (CM).¹

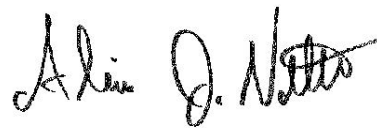
CONCLUSION

The Court hereby dismisses this complaint without prejudice to Plaintiff's pending action under case number 20-CV-5346 (CM). The Clerk of Court is respectfully directed to enter judgment, close the case, and mail a copy of this order to Plaintiff and to note service on the public docket.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 11, 2020
New York, New York



ALISON J. NATHAN
United States District Judge

¹ The Court has been informed that the Clerk of Court returned Plaintiff's \$400.00 money order to him, and that he will be allowed to resubmit the \$400.00 in fees. If he elects to do so, Plaintiff must include the case number for the action before Chief Judge McMahon, Case No. 20-CV-5346 (CM), so that the Clerk's office properly processes the payment and applies it to the correct case.